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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

BEFORE THE HONORABLE WINIFRED Y. SMITH, JUDGE PRESIDING

DEPARTMENT NUMBER 21

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COORDINATION PROCEEDING	)	
SPECIAL TITLE (RULE 3.550)	)	
	)	
ROUNDUP PRODUCTS CASE	)	<b>JCCP No. 4953</b>
	)	
_____	)	
THIS TRANSCRIPT RELATES TO:	)	
	)	
Pillioid, et al.	)	<b>Case No. RG17862702</b>
vs.	)	
Monsanto Company, et al.	)	<b>Pages 5732 - 5740</b>
_____	)	<b>Volume 33</b>

Reporter's Transcript of Proceedings

Thursday, May 9, 2019

Reported by: Lori Stokes, CSR No. 12732, RPR  
Stenographic Court Reporter



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21               (Multiple other counsel present as reflected in the  
22               minutes.)

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1 Thursday, May 9, 2019

10:45 a.m.

2 (The following proceedings were heard out of  
3 the presence of the jury:)

4 **THE COURT:** Just to go on the record briefly.  
5 There are three questions. I proposed answers, which  
6 the attorneys have approved as to 1 and 2.

7 And then the third is a request for testimony  
8 from Dr. Bello, and I'm asking the court reporter to  
9 identify what she thinks is a response to that, and then  
10 the lawyers can meet and confer, and we'll make a  
11 decision about what the jury will actually hear.

12 **MR. WISNER:** Your Honor, also, I think this  
13 fourth question would be a read back as well, wouldn't  
14 it? About Dr. Benbrook?

15 **THE COURT:** No. That is a question that the  
16 juror just wrote out yesterday and forgot to give to  
17 Onesha. She handed it to her this morning.

18 So I received it, but it can't be asked. So  
19 it's not a request for read back; it's just a question  
20 she or he -- one of the jurors, I can't recall which  
21 one -- would have given to us.

22 **MR. WISNER:** Okay.

23 **THE COURT:** I just want to put that in the  
24 record as a question that was out there.

25 **MR. WISNER:** Okay.

1                   **THE COURT:** All right.

2                   So when you come up with the read back, let me  
3 know what it is, and we'll see what the lawyers think  
4 about it.

5                   (Recess taken from 10:47 a.m. to 10:59 a.m.)

6                   (The following proceedings were heard out of  
7 the presence of the jury:)

8                   **MR. ISMAIL:** One thing that might help clarify  
9 question number 2, which is the exhibit reference, those  
10 are both medical articles. And perhaps adding to your  
11 answer that --

12                   **THE COURT:** That they are not admitted?

13                   **MR. WISNER:** Yeah.

14                   **THE COURT:** I didn't look and see what they  
15 were. I can add that in.

16                   **MR. WISNER:** What we wanted to say is  
17 something -- these exhibits are not in evidence. By  
18 agreement of the parties, they did not admit medical  
19 literature into evidence.

20                   Does that work for you guys?

21                   **MR. ISMAIL:** However you want to phrase it.

22                   **THE COURT:** Some variation of that.

23                   So I'll have her go do the read back.

24                   (Record read to the jury per agreement of  
25 counsel.)

1 (Recess taken from 10:35 a.m. to 11:30 a.m.)

2 (Record read to the jury per agreement of  
3 counsel.)

4 (Recess taken from 11:57 a.m. to 4:13 p.m.)

5 (The following proceedings were heard out of  
6 the presence of the jury:)

7 **THE COURT:** I proposed an answer to the jury  
8 question number 4, which the lawyers -- you can express  
9 any concern or modification or objection. I think we've  
10 come to an agreement, at least what I recommend, and I  
11 think is the appropriate answer. So by all means,  
12 Mr. Ismail.

13 **MR. ISMAIL:** Your Honor, I understand jury  
14 instruction number 37 comes from the CACI, and what Your  
15 Honor has proposed here is consistent with that.

16 We want to preserve an objection to this  
17 because we obviously have -- seemingly have some sort of  
18 split in the jury.

19 And the way 37 is written, and the way this  
20 instruction is going to go back to the jury, it would  
21 allow, obviously, for not the same nine people to agree  
22 on each subpart to a claim, which would allow a finding  
23 under a particular claim where fewer than nine people  
24 agree that each of the claim elements have been met.

25 So, for example, Jurors 1 through 9 could say

1 yes on question 1, and Jurors 4 through 12 agree on --  
2 say yes to question 2, but you only have six people who  
3 think liability is found.

4 **THE COURT:** That's a function of California  
5 law.

6 **MR. ISMAIL:** It is. I recognize that. I know  
7 you're not going to change it here. But I'm preserving  
8 the objection that it is --

9 **THE COURT:** I understand what you're saying.

10 **MR. ISMAIL:** It seems like an inconsistency in  
11 the way -- where it's written that a verdict requires  
12 nine, and a verdict here would actually potentially not  
13 require nine; it could require fewer than nine.

14 And I understand Your Honor is bound by the  
15 way the law is written in the CACI, but we're preserving  
16 that objection in light of that.

17 **THE COURT:** That's fine.

18 **MR. WISNER:** I think, for our record, we  
19 believe that the objection has been waived at this  
20 point.

21 **THE COURT:** Well, I have to follow California  
22 law, which does explicitly say that not all nine have to  
23 answer each question the same way. It's just provided  
24 for --

25 **MR. ISMAIL:** It's always bothered me.

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**THE COURT:** That may be one of those Supreme Court cases down the pike, where the question of the meaning of instruction 37 -- which would be interesting while I'm lying retired on the beach.

**MR. WISNER:** All could have been avoided with a general verdict form.

**THE COURT:** So you say.

All right. I will see you all on Monday.

(Proceedings adjourned at 4:15 p.m.)



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2 County of Alameda )

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I, Lori Stokes, Court Reporter at the Superior Court of California, County of Alameda, do hereby certify:

That I was present at the time of the above proceedings;

That I took down in machine shorthand notes all proceedings had and testimony given;

That I thereafter transcribed said shorthand notes with the aid of a computer;

That the above and foregoing is a full, true, and correct transcription of said shorthand notes, and a full, true and correct transcript of all proceedings had and testimony taken;

That I am not a party to the action or related to a party or counsel;

That I have no financial or other interest in the outcome of the action.

Dated: May 9, 2019

  
Lori Stokes, CSR No. 12732